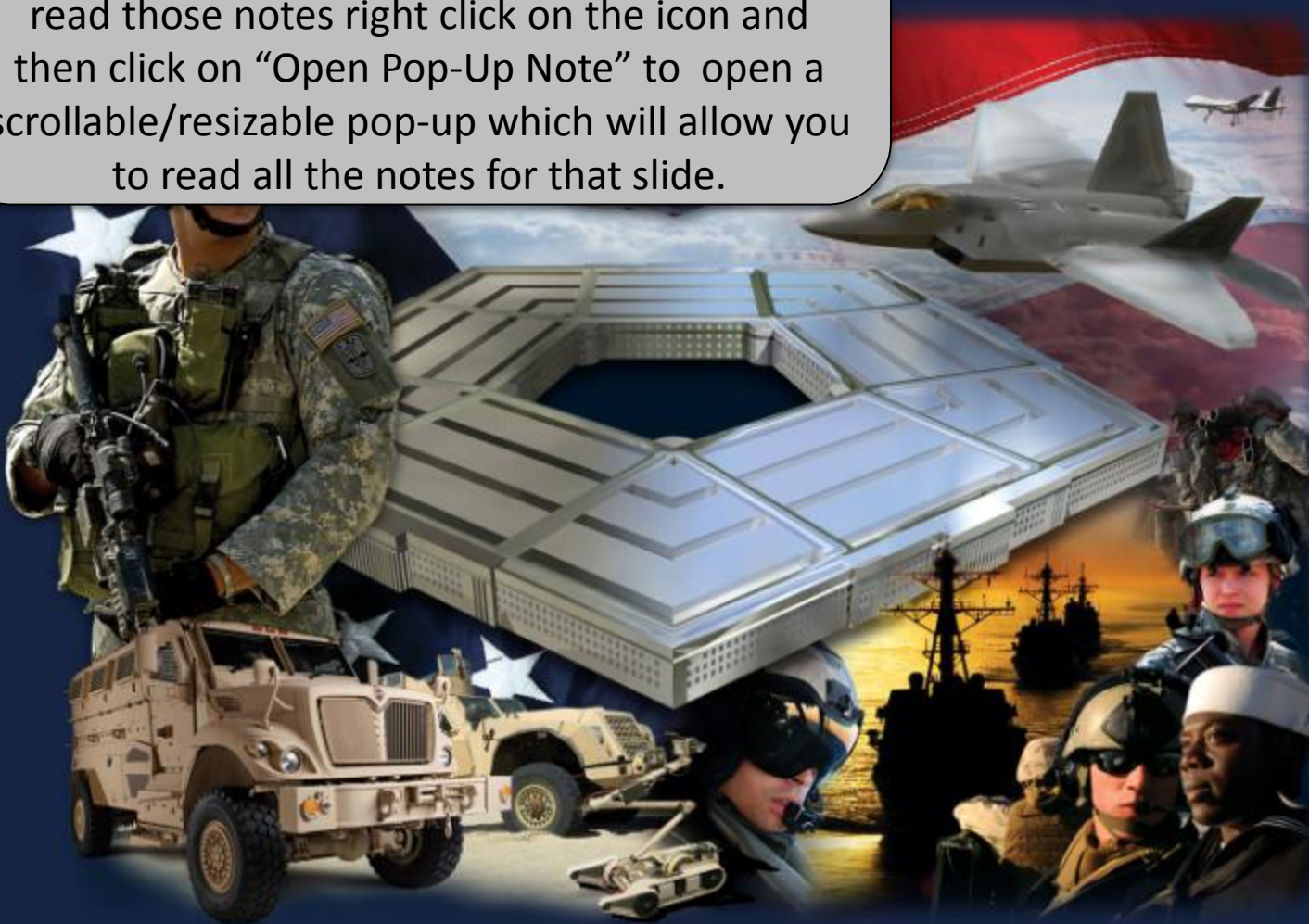


# Contracting for FMS



Roll your mouse pointer over this icon to see the notes which accompany each slide. Some notes are too long to fit into the pop-up. To read those notes right click on the icon and then click on "Open Pop-Up Note" to open a scrollable/resizable pop-up which will allow you to read all the notes for that slide.

# for FMS





# Notice of Update

This presentation was originally prepared for the 2012 DoD Procurement Conference and Training Symposium that was cancelled.

The current content has been slightly revised from the original in order to incorporate subsequent policy changes and reference updates.

Content is current as of 12 September 2013.







# Purpose

- Highlight how contracting for FMS contributes to U.S. national security and foreign policy strategies
- Discuss the contracting officer's role in enabling the FMS process to be successful
- Challenge you to view contracting for FMS as more than just another business transaction





# FMS Contracting

- Terminology
- Organizational Roles & Responsibilities
- Magnitude of FMS
- FMS Process Background
- Contracting Officer Role in FMS
  - Offer, Execution, Closure
  - Pseudo FMS / Building Partnership Capacity
  - FMS Customer Participation





# Security Cooperation



- DoD term\* for all interactions with foreign defense establishments to:
  - Build defense relationships that promote specific US security interests
  - Develop allied & friendly military capabilities for self-defense and multinational operations
  - Provide US forces with peacetime and contingency access to a host nation.
- Foreign Military Sales (FMS) is a tool for implementing security cooperation national security strategies

\*Joint Pub 1-02





# Security Assistance

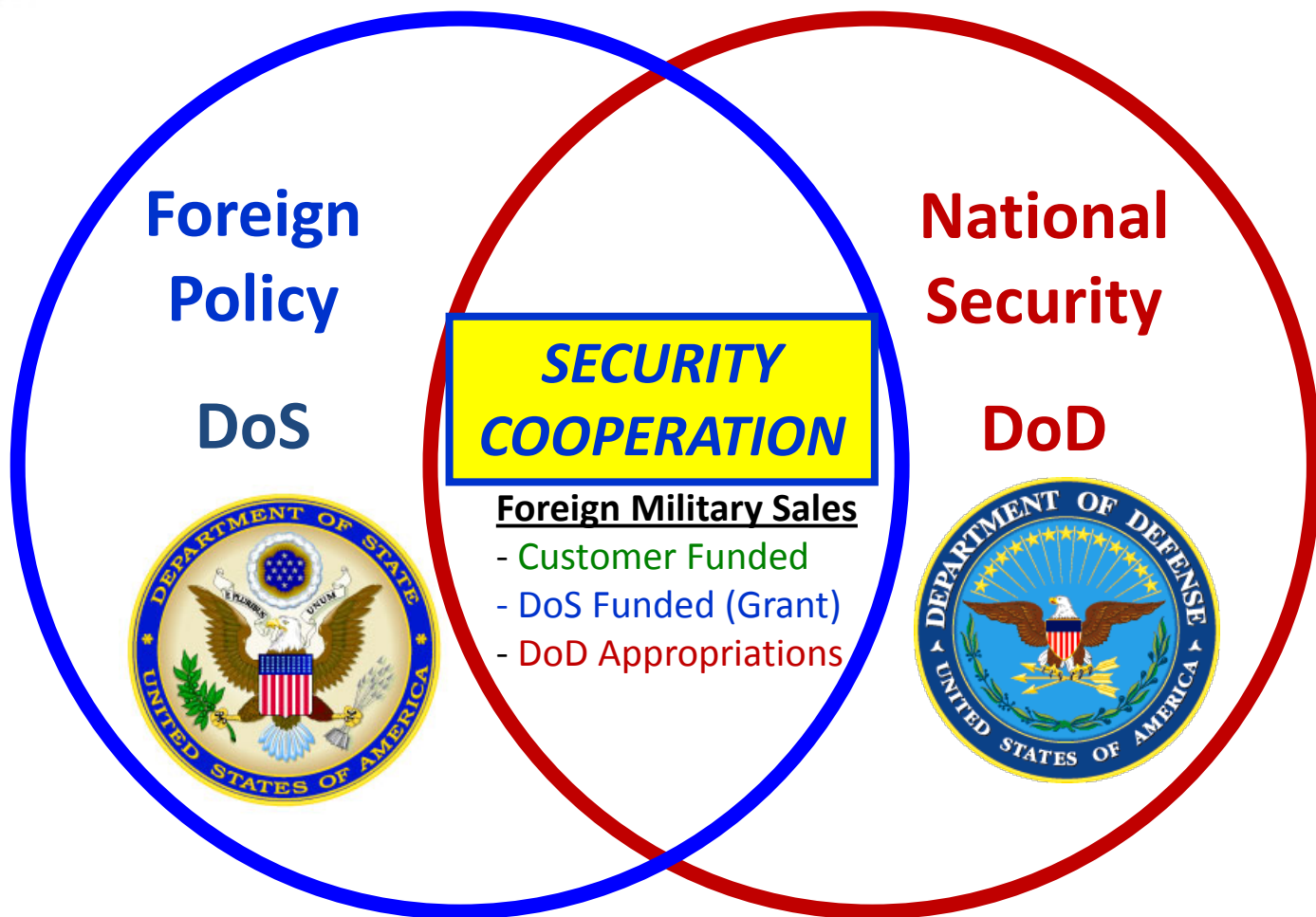
- State Department term\* for a group of programs through which the US provides:
  - Defense articles
  - Military training
  - Other defense services
- Goal: To promote national policies and objectives
- Foreign Military Sales (FMS) is a tool for implementing security assistance foreign policy



\*Joint Pub 1-02



# Security Cooperation





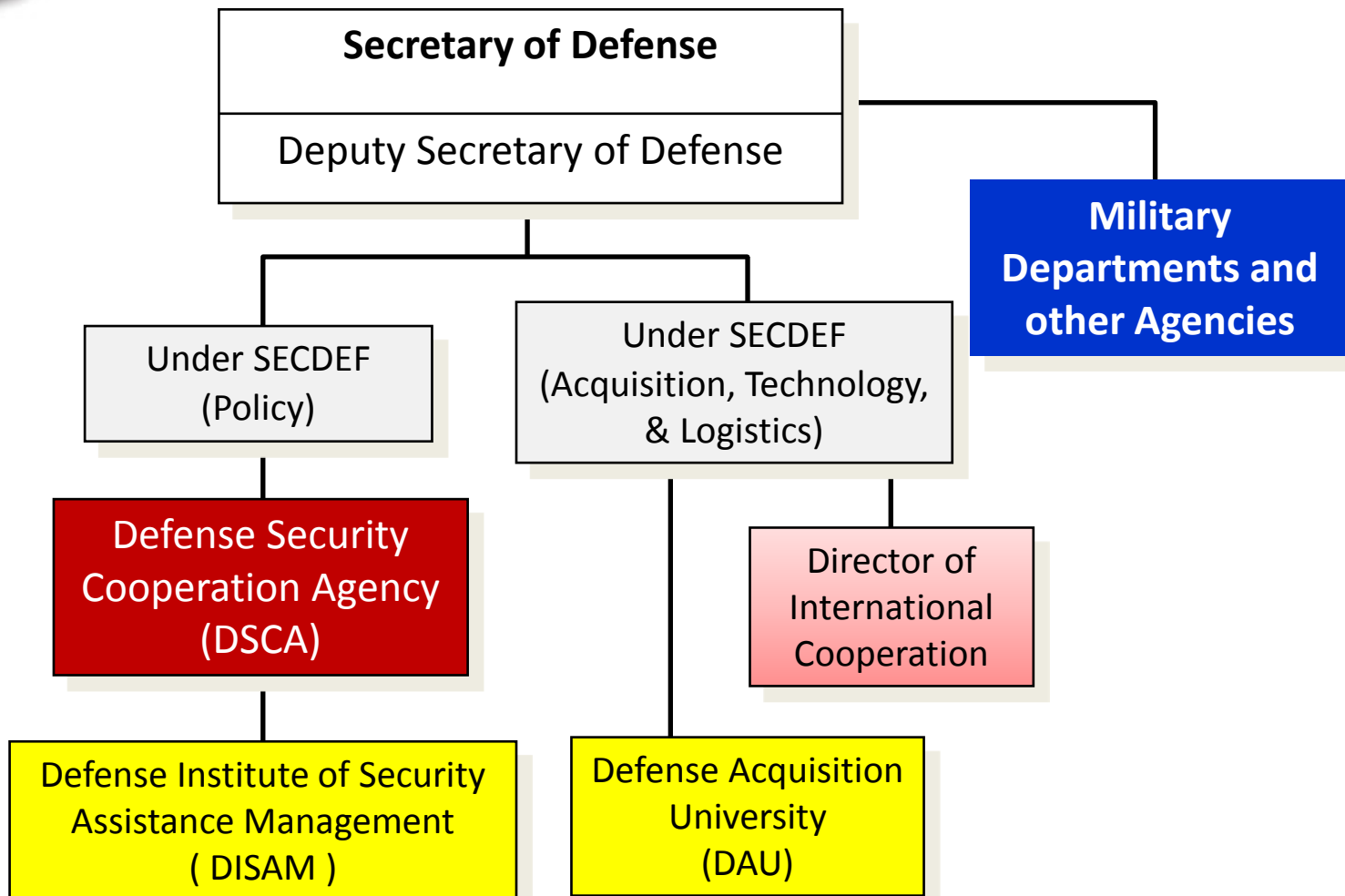
# Defense Security Cooperation Agency

- OSD policy level agency with leadership, management, and oversight responsibility for DoD Security Cooperation (SC) programs
- USG interagency advocate for SC initiatives and programs
- Issues the Security Assistance Management Manual (SAMM) as SC (FMS) policy
- Operates a DoD schoolhouse
  - DISAM—Defense Institute of Security Assistance Management



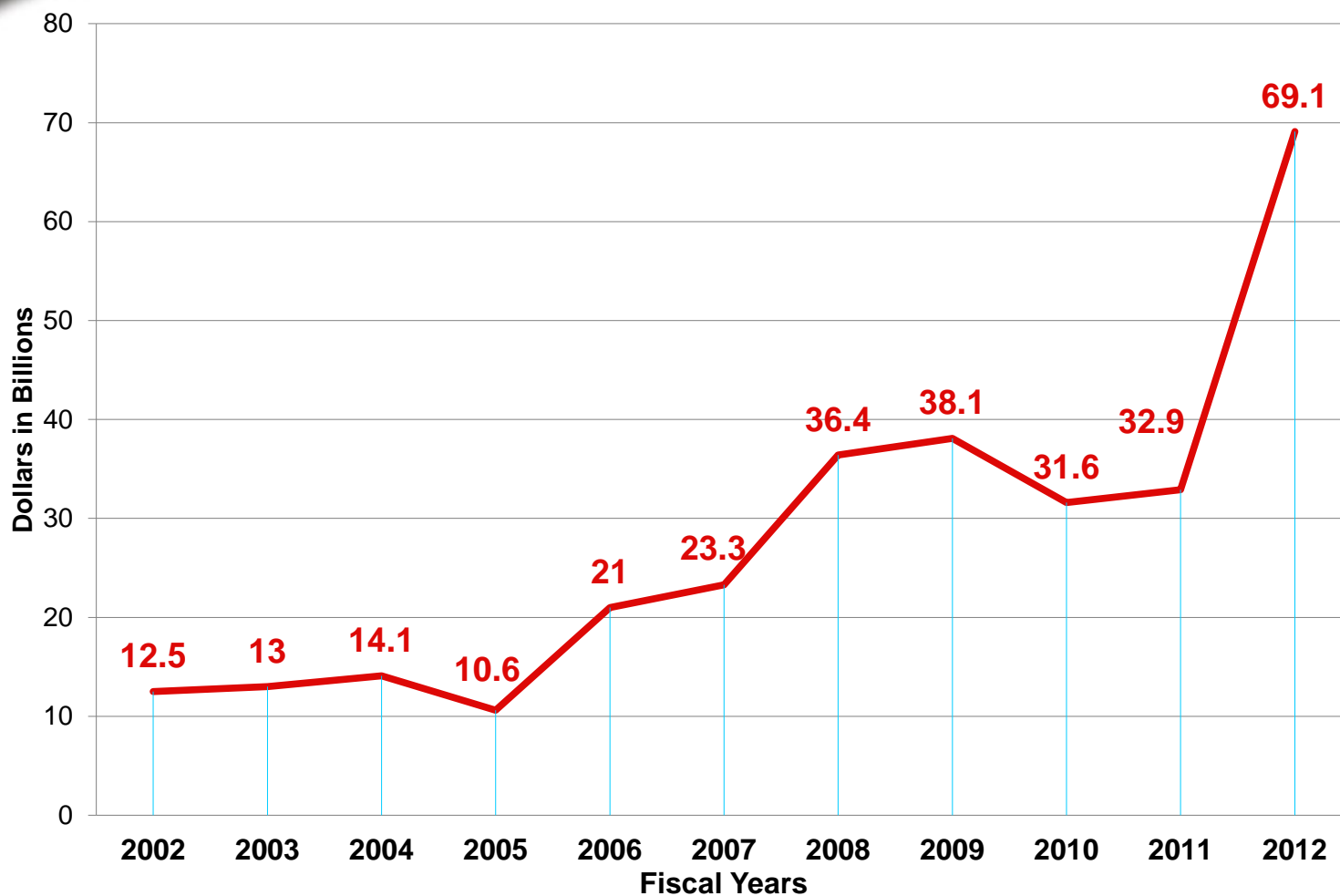


# DoD Relationships





# FMS Sales By Fiscal Year



Dollars in billions





# Magnitude of FMS

If DSCA were a business,  
it would be a Fortune 500 Company\*

2009			2010			2011		
Fortune 500 Rank	Company	Revenues \$ Millions	Fortune 500 Rank	Company	Revenues \$ Millions	Fortune 500 Rank	Company	Revenues \$ Millions
48	Time Warner	46,984.0	61	Northrop Grumman	35,291.0	73	FedEx	34,734.0
49	Sears Holdings	46,770.0	62	Intel	35,127.0	74	Hess	34,613.0
50	Safeway	44,104.0	63	Aetna	34,764.1	75	Ingram Micro	34,589.0
51	Supervalu	44,048.0	64	New York Life Insurance	34,014.3	76	Johnson Conotrols	34,305.0
52	PepsiCo	43,251.0	65	Prudential Financial	32,688.0	77	Aetna	34,246.0
53	Kraft Foods	42,867.0	66	Caterpillar	32,396.0	78	Amazon	34,204.0
54	Lockheed Martin	42,731.0	67	Sprint Nextel	32,260.0	79	Humana	33,868.2
55	Hess	41,094.0	68	Allstate	32,013.0	80	Ent. Products Partners	33,739.3
56	Best Buy	40,023.0	69	General Dynamics	31,981.0	81	Honeywell Int.	33,370.0
57	Cisco Systems	39,540.0	70	Morgan Stanley	31,515.0	82	Libert Mutual Ins. Grp	33,193.0
<b>FMS Cases</b>		<b>FMS Sales -- 38,090.0</b>	<b>FMS Cases</b>		<b>FMS Sales -- 31,600.0</b>	<b>FMS Cases</b>		<b>FMS Sales - 32,900.0</b>
58	Johnson Controls	38,062.0	71	Liberty Mutual Ins. Group	31,094.0	83	News Corp.	32,778.0
59	FedEx	37,953.0	72	Coca-Cola	30,990.0	84	DuPont	32,733.0
60	Walt Disney	37,843.0	73	Humana	30,960.4	85	Sprint Nextel	32,563.0
61	Intel	37,586.0	74	Honeywell Int.	30,908.0	86	General Dynamics	32,466.0
62	Sysco	37,522.1	75	Abbott Laboratories	30,764.7	87	TIAA-CREF	32,224.9
63	Honeywell International	36,556.0	76	News Corp.	30,423.0	88	Delta Airlines	31,755.0
64	Sprint Nextel	35,635.0	77	HCA	30,052.0	89	Allstate	31,400.0
65	Enterprise GP Holdings	35,469.6	78	Sunoco	29,630.0	90	HCA Holdings	30,683.0
66	GMAC	35,445.0	79	Hess	29,569.0	91	American Express	30,242.0
67	Ingram Micro	34,362.2	80	Ingram Micro	29,515.4	92	Google	29,321.0

\* Based on Foreign Military Sales Figures for Fiscal Years 2009, 2010 and 2011 when compared to the Fortune 500 List for Calendar Years 2009, 2010 and 2011. Fortune 500 Rankings retrieved from <http://money.cnn.com/magazines/fortune/fortune500/2011/>.



# Magnitude of FMS

Implementing Agency	Number of <u>Open</u> Cases	Total Case Value (Billions)
Army	4,868	137.6
Navy	3,907	78.0
Air Force	3,415	178.0
Other Agencies	768	7.0
Total	12,958	400.7

As of 15 Feb 2013



# Global Defense Market



## Global Competition



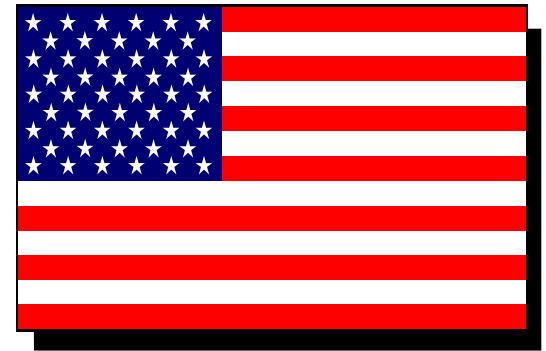


# DoD Preference

## SAMM C4.3.4

DoD **prefers** that countries friendly to the US fill defense requirements with **US origin** items.

- Foreign Policy
- Military Relationships
- Interoperability
- Economies of Scale
- Defense Industrial Base



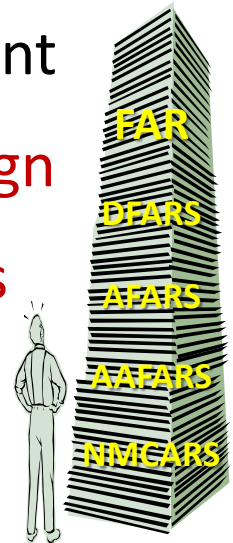


# FMS Benefits and Protection

## SAMM C6.3.1

Acquisition for FMS must be in accordance with DoD regulations and other USG procedures.

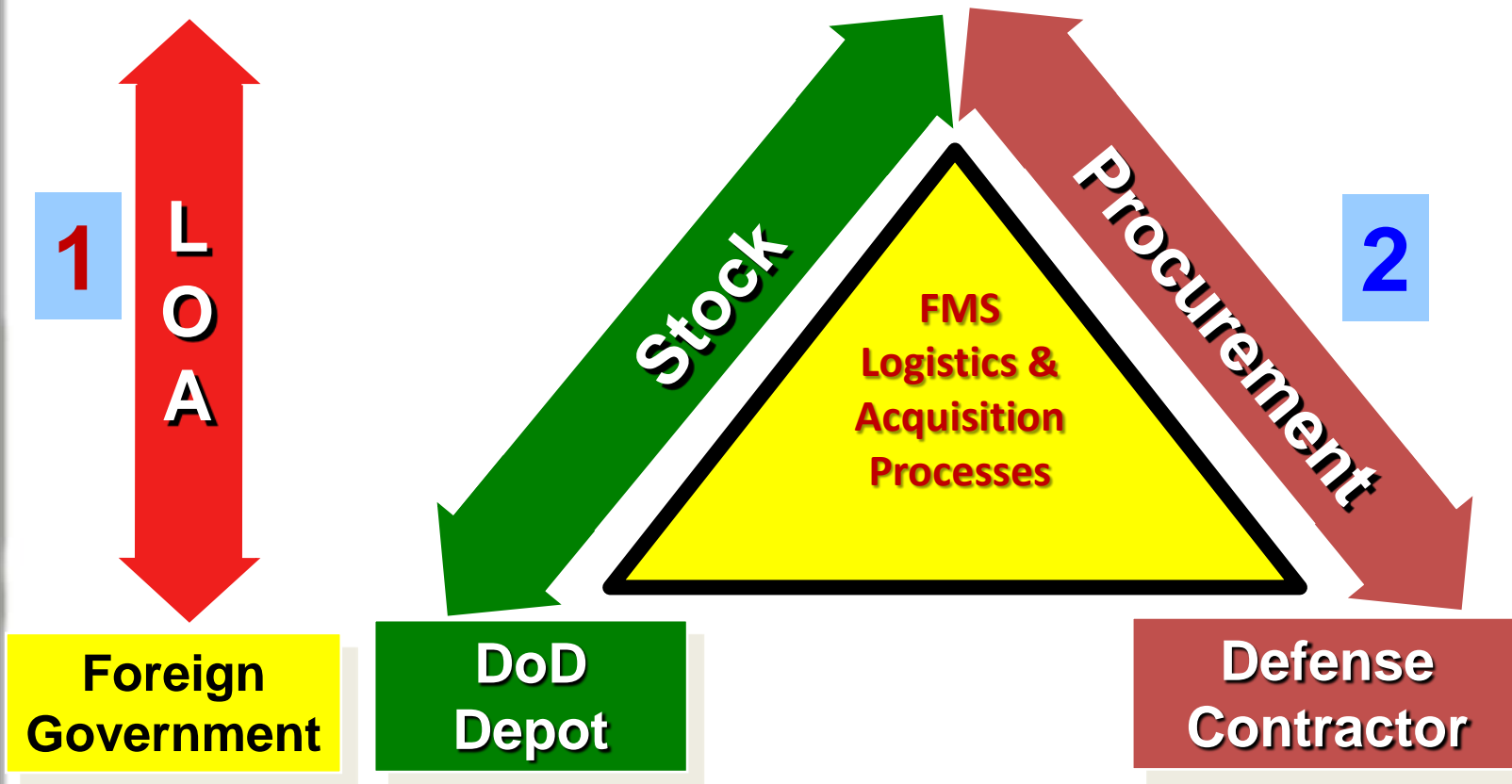
This affords the foreign purchaser the **same benefits and protection** that apply to DoD procurement and is one of the **principal reasons why foreign governments and international organizations prefer to procure through FMS** channels.





# FMS Relationships

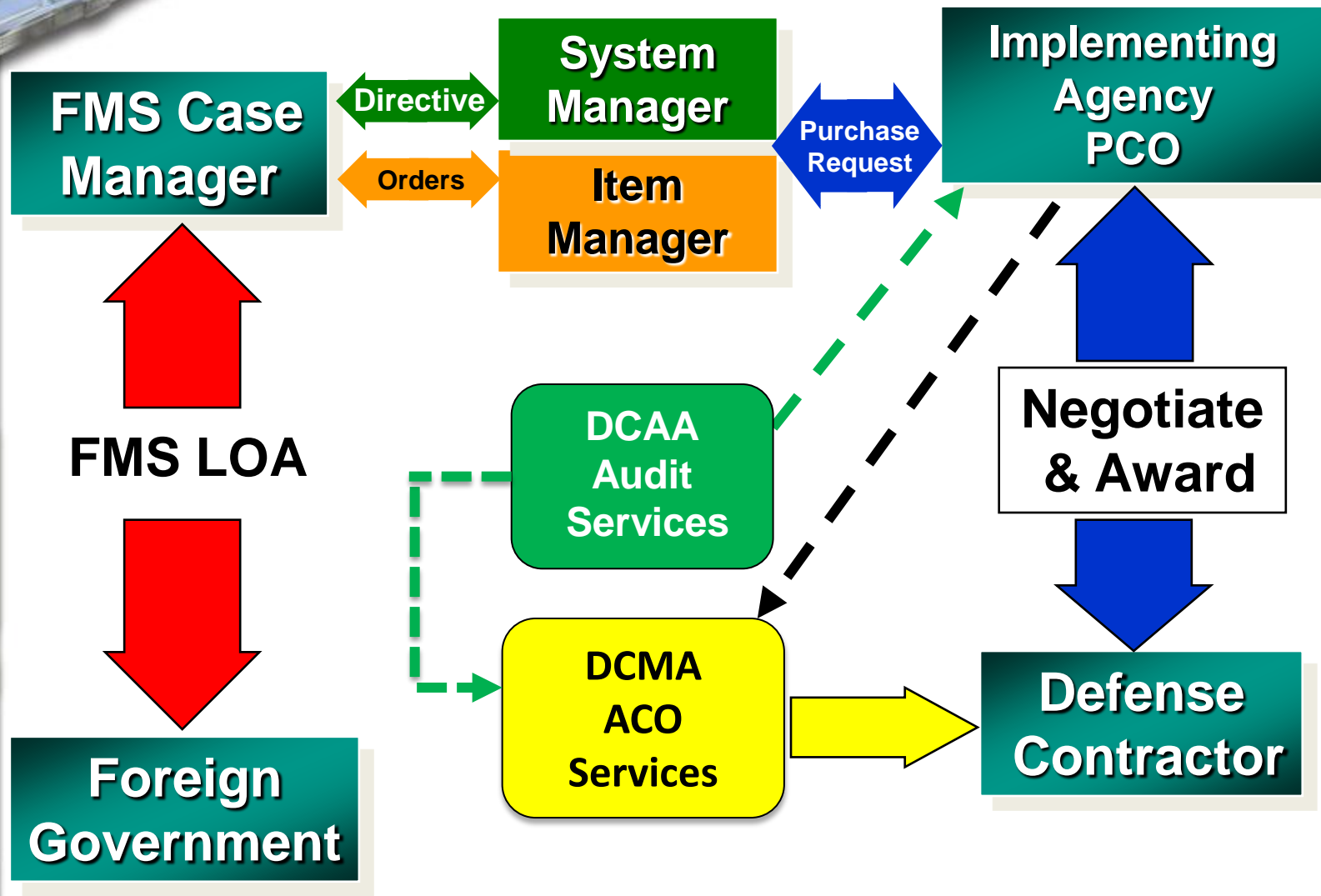
## United States Government







# FMS Functional Relationships

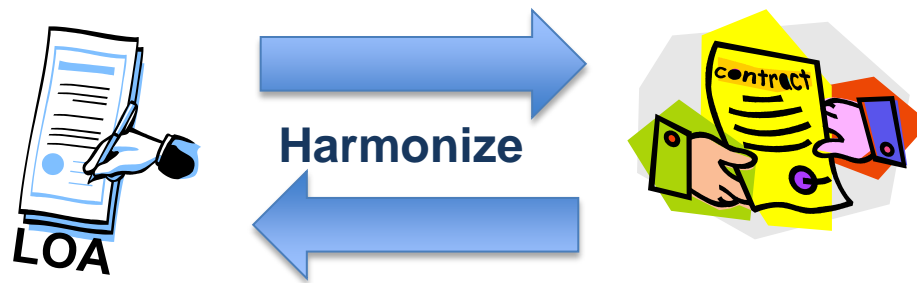




# LOA & Contract Relationship

SAMM C6.3.5 - Discussions are held with the purchaser during the development of the LOA ... to ensure requirements are clear and understood...and that **sufficient details are included in the LOA to negotiate and award a contract.**

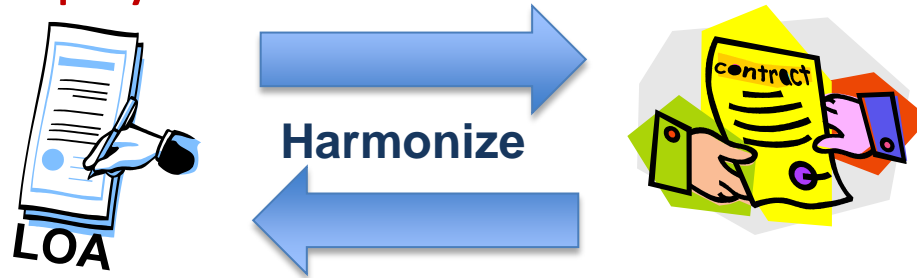
SAMM C6.3.3 - The Case Manager and contracting officer work together to make sure the **contract and the LOA are consistent.**



# Contracting Officer in LOA Execution

SAMM C6.3.5.2 - The contracting officer should consult with the FMS purchaser about major contractual matters, **especially any matter that could be perceived as inconsistent with or significantly different from the LOA.**

SAMM C9.9.3 - Payment schedules updates are necessary to reflect revisions to **delivery schedules, pricing updates, contract award dates, and contractor payment milestones.**





# Letter of Offer and Acceptance (LOA)



## United States of America Letter of Offer and Acceptance (LOA)

BN-D-YCY

### ROYAL HUMDINGER II

Based on (DISAM) Government of Bandaria (GOB) letter dated (continued on page 2)

Pursuant to the Arms Export Control Act, the Government of the United States (USG) offers to sell to the Embassy of Bandaria, Office of the Air Attache, 2468 16th Street NW, Washington, DC 20009-2468, the defense articles or defense services (which may include defense design and construction services) collectively referred to as "items," set forth herein, subject to the provisions, terms, and conditions in this LOA.

This LOA is for 94 SL-HUM-120Z Humdinger Missiles, including SL-LAU-HUM-999A/A missile launchers, containers, two years initial spare parts, support (continued on page 2)

Estimated Cost: \$104,224,392

Initial Deposit: \$2,613,552

Terms of Sale:

Cash Prior to Delivery

Dependable Undertaking

Congressional Notification: 10-99

This offer expires on 30 September 2010. Unless a request for extension is made by the Purchaser and granted by the USG, the offer will terminate on the expiration date.

This LOA consists of page 1 through page 26.

The undersigned are authorized representatives of their Governments and hereby offer and accept, respectively, this LOA:

_____ US Signature	13 Aug 2010 Date	_____ Purchaser Signature	28 Sep 2010 Date
CANCY Z. BUDDSON			
_____ Typed Name and Title		_____ Typed Name and Title	
COMMANDER, 555th INT'L GROUP (AFSAC)			
_____ Implementing Agency		_____ Agency	
DSCA Reviewed/Approved		13 Aug 2010	
DSCA		Date	

Information to be provided by the Purchaser:

Mark For Code (A)\_, Freight Forwarder Code (2)\_, Purchaser Procuring Agency Code B\_

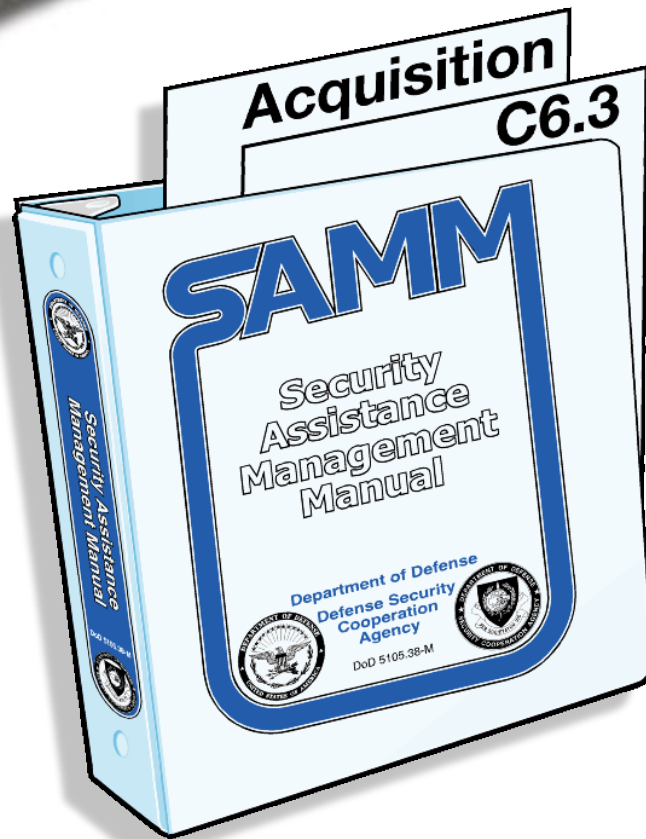
Name and Address of the Purchaser's Paying Office: Embassy of Bandaria, Office of Finance & Procurement, 2468 16th Street NW, Washington DC 20009-2468

# Letter of Offer and Acceptance (LOA)

## Items to be Supplied (costs and months for delivery are estimates):

(1) Itm Nbr	(2) Description/Condition	(3) Qty, Unit of Issue	(4) Costs		(5) SC/MOS/ TA	(6) Ofr Rel Cde	(7) Del Trm Cde
			(a) Unit	(b) Total			
001 B1Z D3 47	144001HUM120Z (Y)(M)(E) MISSILE, SURFACE LAUNCH, HUMDINGER, SL-HUM-120Z (DISAM)  SL-HUM-120Z Humdinger Surface Launched, Ground to Air, Medium Range Missile (Note(s) 1, 19, 20, 21, 23, 35)	94 EA	\$837,055.00	\$78,683,170	P(1-60) TA5	X	7
002 B1Z D3 47	1440SLHUMLAUZ (Y)(M)(R) LAUNCHER, HUMDINGER SL-HUM- LAU-999A/A (DISAM)  Humdinger Surface to Air Launcher, SL-HUM-LAU- 999A/A (Note(s) 2, 21, 31, 35)	16 EA	\$38,706.23	\$619,300	P(1-36) TA5	X	7
003 B1Z D3 47	692001CTM120Z (S)(M)(E) MISSILE, HUMDINGER, TRAINING, SL-CATM-120Z (DISAM)  Humdinger Training Missile, CATM-120Z (Note(s) 3, 21, 35)	10 EA	\$48,884.00	\$488,840	P(1-48) TA5	X	7

# FMS Acquisition Policy

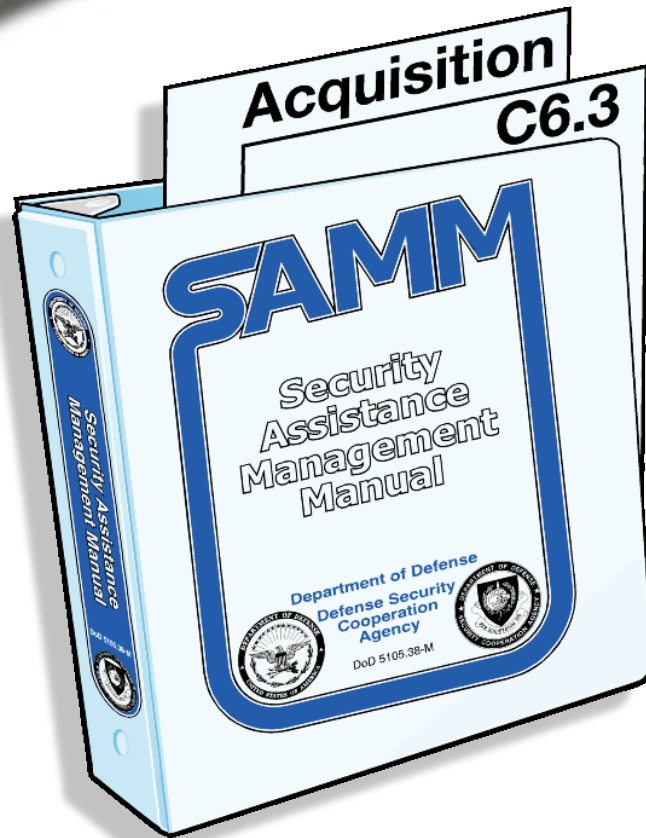


1. FAR / DFARS Authority
2. Cost / Pricing Data
3. Incentive Clauses
4. Other than Full & Open Competition
5. Purchaser Involvement
6. Contractual Data Requests
7. Contingent Fees
8. Warranties
9. Offsets

<http://www.dsca.mil/samm/>



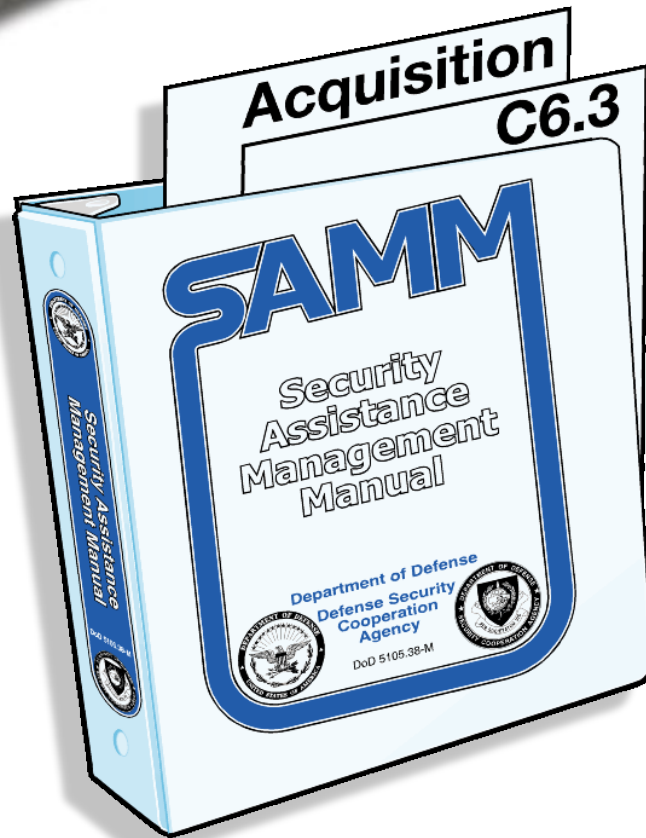
# FMS Acquisition Policy



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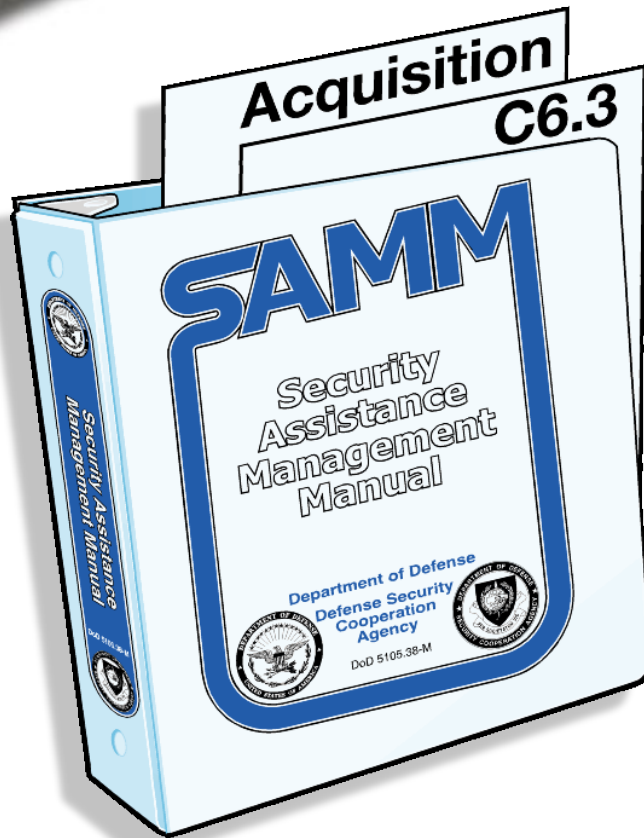
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# FMS Acquisition Policy

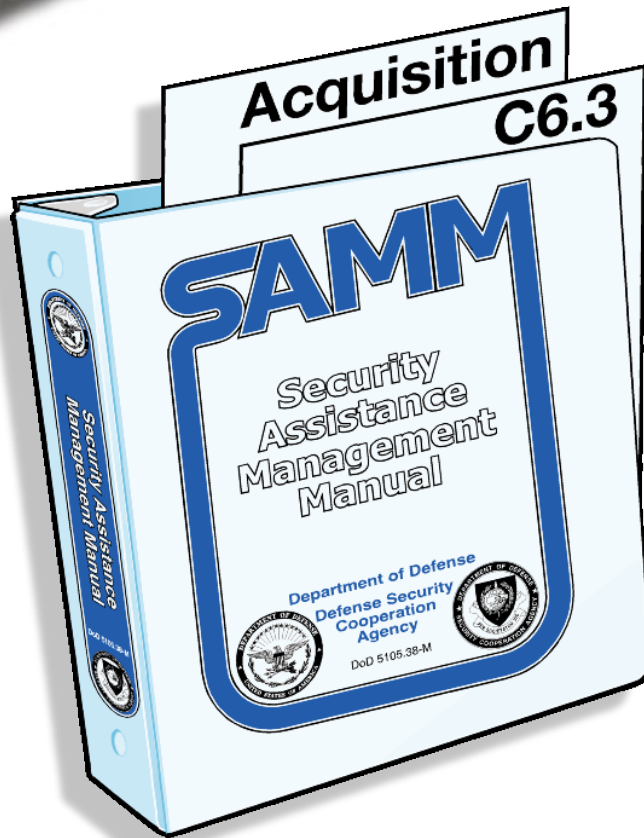


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# FMS Acquisition Policy



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<http://www.dsca.mil/samm/>



# FMS Sole Source

## SAMM C6.3.4

- FMS term for customer requests to procure using Other than Full & Open Competition
- Customer sole source rationale no longer required
  - Policy changed in Aug 2012
- Sole source requests are to be coordinated with the applicable contract office for advice
  - Poor past performance
  - No prior experience at task
  - Ineligible for contracts
  - Represent high risk





# FMS Sole Source

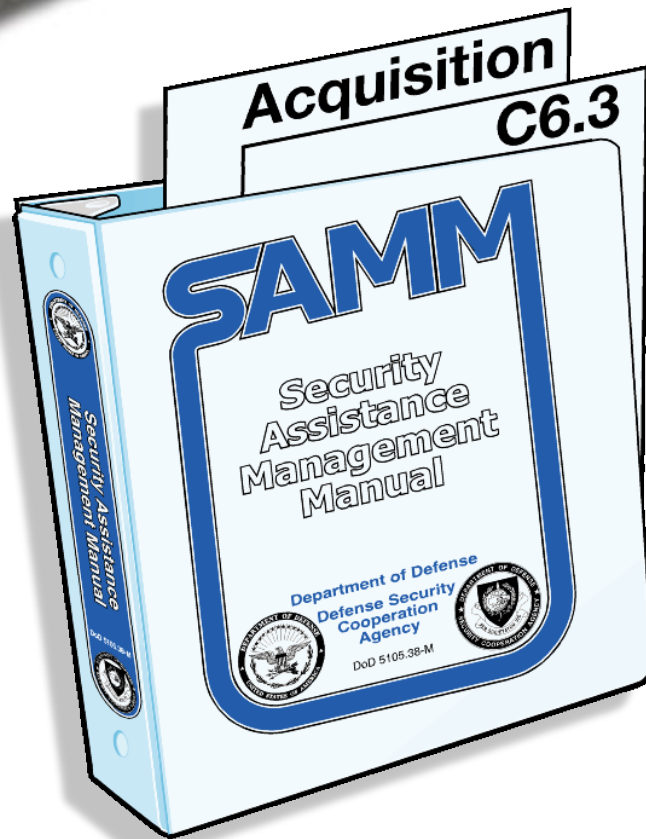
## FAR 6.3 Other Than Full & Open Competition

1. Single Responsible Source
2. Unusual & Compelling Urgency
3. Maintain Industrial Capability
- 4. International Agreement**
5. Required By Law
6. National Security
7. Public Interest





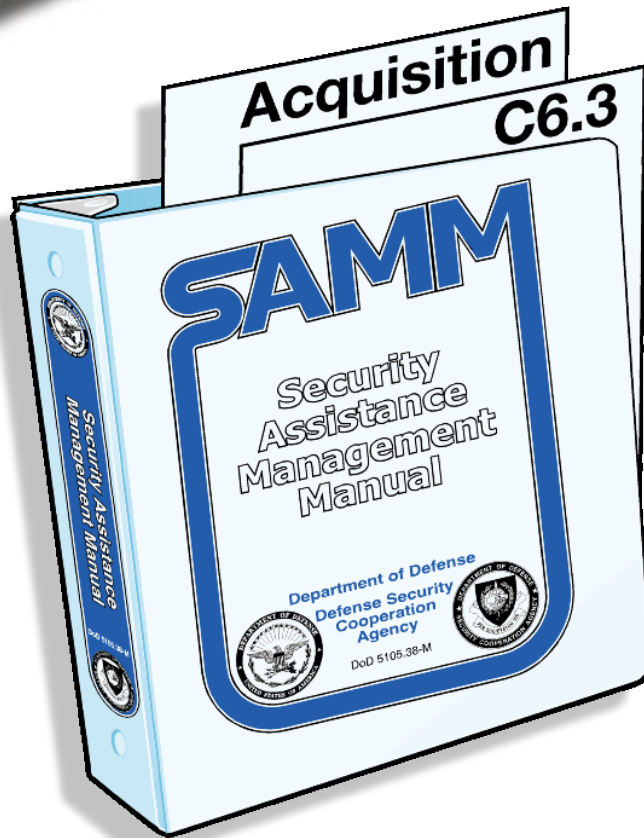
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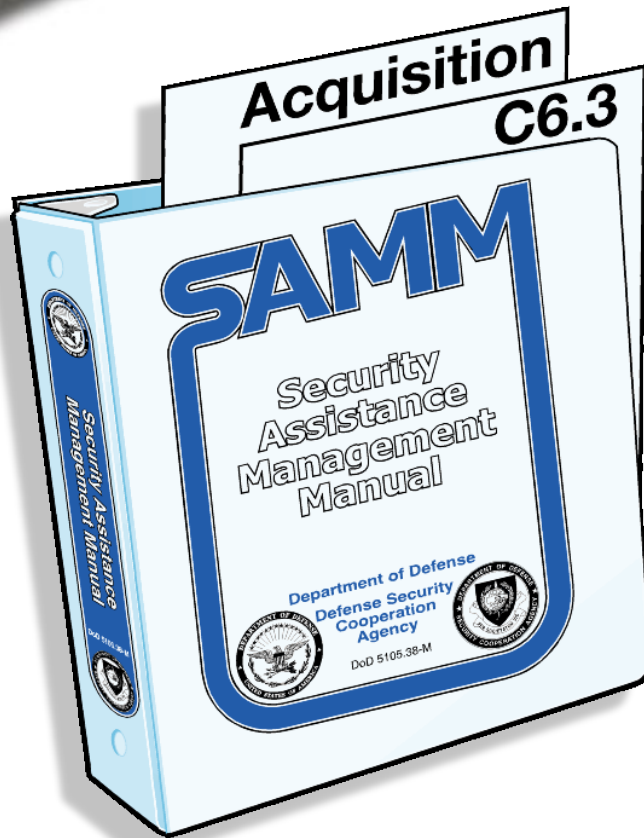
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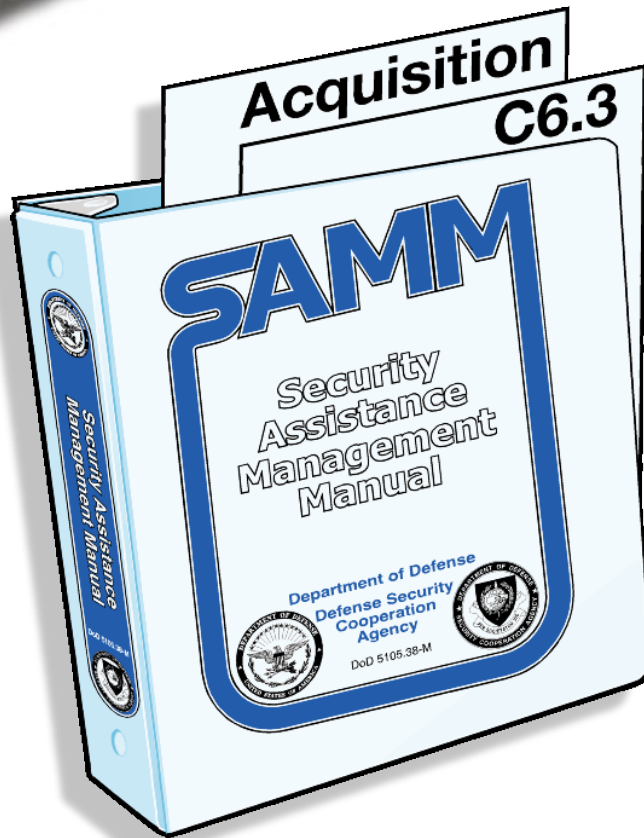


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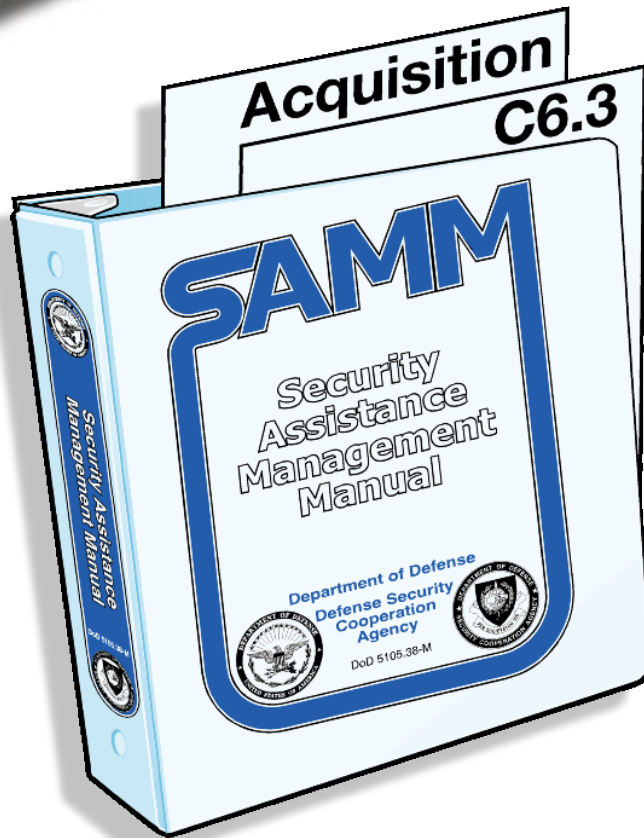
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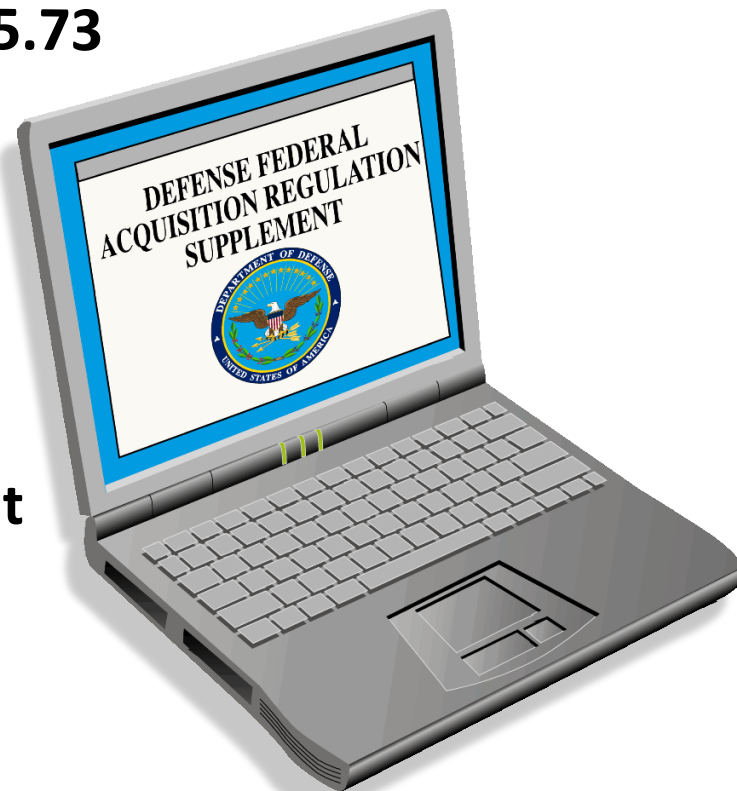
<http://www.samm.dsca.mil>



# DFARS FMS Policy

## Acquisitions for FMS Subpart 225.73

- **7300 - Scope**
- **7301 - General**
- **7302 - Guidance**
- **7303 - Pricing**
- **7304 - Customer Involvement**
- **7305 - Limitation of Liability**
- **7306 - Offsets**
- **7307 – Contract Clauses**



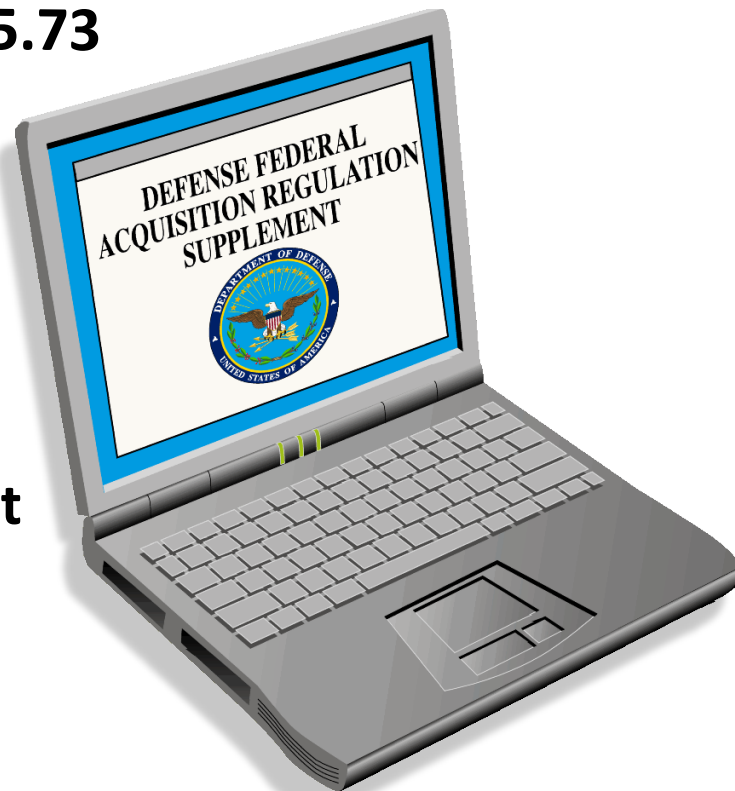




# DFARS FMS Policy

## Acquisitions for FMS Subpart 225.73

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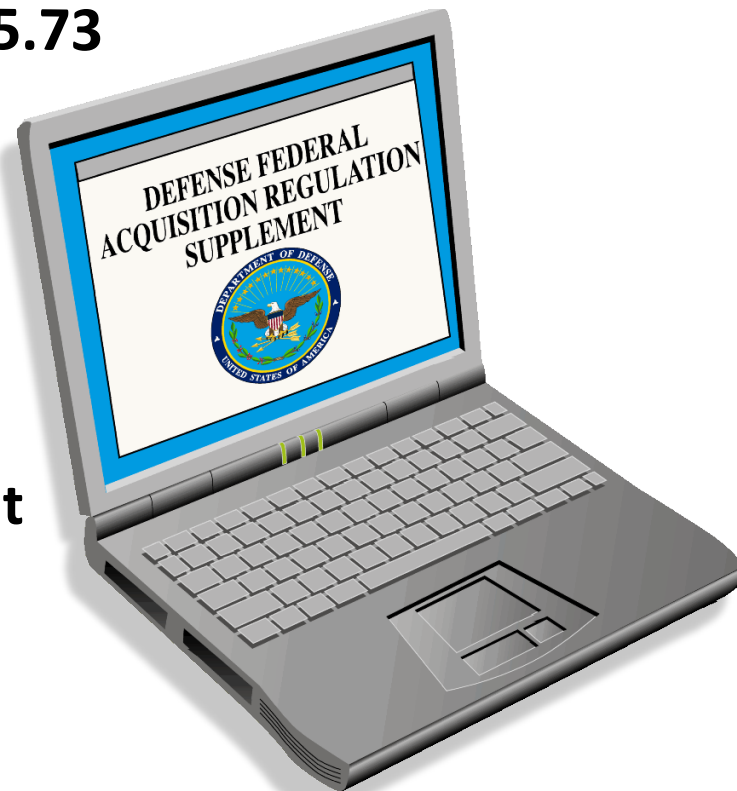




# DFARS FMS Policy

## Acquisitions for FMS Subpart 225.73

- 7300 - Scope
- **7301 - General**
- 7302 - Guidance
- 7303 - Pricing
- 7304 - Customer Involvement
- 7305 - Limitation of Liability
- 7306 - Offsets
- 7307 – Contract Clauses



# Subpart 225.7301(c) – Guidance (PGI)

- Separately identify FMS requirements in solicitations
  - CLIN & SubCLIN Structure / ACRNS / Payment Instructions
- Ensure LOA terms / country unique requirements are incorporated into contract
- Comply with Defense Transportation Regulation, Part II requirements for packaging, labeling and documentation
  - Appendix E: Security Cooperation Shipments (34 pages)
  - Transportation plan required for classified; arms, ammo & explosives; hazardous





# Subpart 225.7301(c) – Guidance (PGI)

- Material inspection and receiving reports
  - Shipping information requires FMS case identifier, special markings and gross weight
  - Info needed for transportation and customs clearance
- Use of the FMS Transportation Account Code in the contract
- Period of Pseudo LOA funds availability
  - Contract performance period must be consistent with funds availability

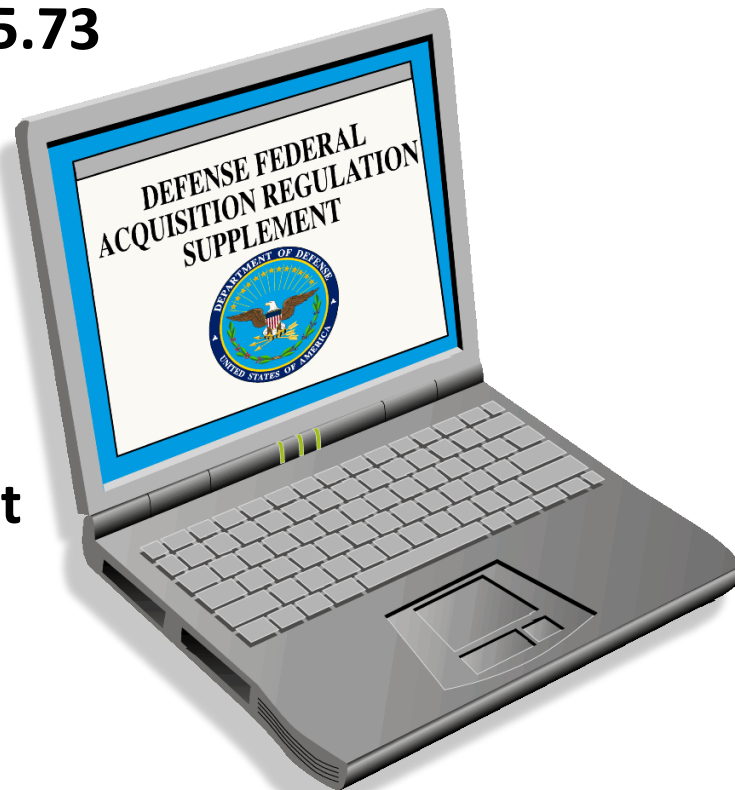




# DFARS FMS Policy

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# Subpart 225.7302 – Guidance (PGI)

Contracting Officer will assist the LOA implementing agency (IA) by—

(1) Working with prospective contractors to—

- (i) Identify, **in advance of the LOA**, any unusual provisions or deviations;
- (ii) Advise the contractor if the IA expands, modifies, or does not accept any requirements proposed by the contractor;
- (iii) Identify any logistics support necessary to perform the contract; and
- (iv) For noncompetitive acquisitions over \$10,000, **ask the prospective contractor for information on price, delivery, and other relevant factors**





# Subpart 225.7302 – Guidance (PGI)

(2) Working with the [Implementing Agency](#) responsible for preparing the LOA to—

- (i) Assist, as necessary, in preparation of the LOA;
- (ii) Identify and explain all unusual contractual requirements or requests for deviations; and
- (iii) Assist in preparing the price and availability data.





# Contracting Officer in LOA Offer

- Realistically set customer expectations
  - Total Cost
  - Delivery Schedule
  - Expenditure Profile
- Identify any unique issues to be addressed with customer
- Review and advise on customer generated sole source requests
- Establish extent of customer participation

## Estimated Payment Schedule

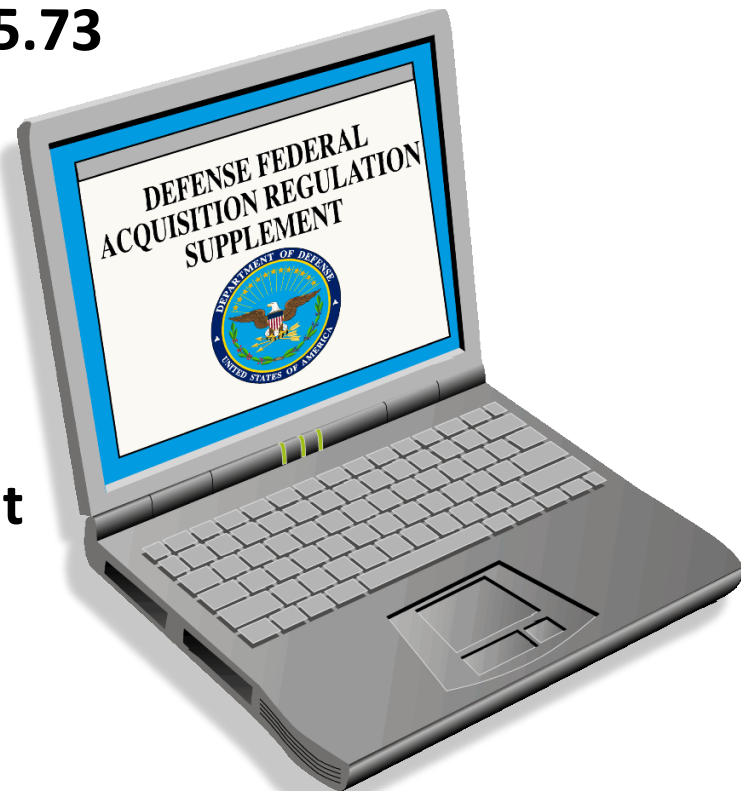
Payment Date	Quarterly	Cumulative
Initial Deposit	\$1,100,000	\$1,100,000
15 Jun 2012	600,000	1,700,000
15 Sep 2012	800,000	2,500,000
15 Dec 2012	700,000	3,200,000
15 Mar 2012	900,000	4,100,000



# DFARS FMS Policy

## Acquisitions for FMS Subpart 225.73

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- 7302 - Guidance
- **7303 - Pricing**
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# Subpart 225.7303 – Pricing

- Use same pricing principles as other DoD contracts
- Recognize the reasonable & allocable **cost of doing business with an international customer**, even though costs might not be recognized in the same amounts in DoD only contracts
  - Selling expenses
  - Product support and post delivery service expenses
  - Offset costs
    - [http://www.acq.osd.mil/dpap/cpic/ic/offsets\\_of\\_foreign\\_military\\_sales.html](http://www.acq.osd.mil/dpap/cpic/ic/offsets_of_foreign_military_sales.html)
  - Independent Research & Development and Bid & Proposal

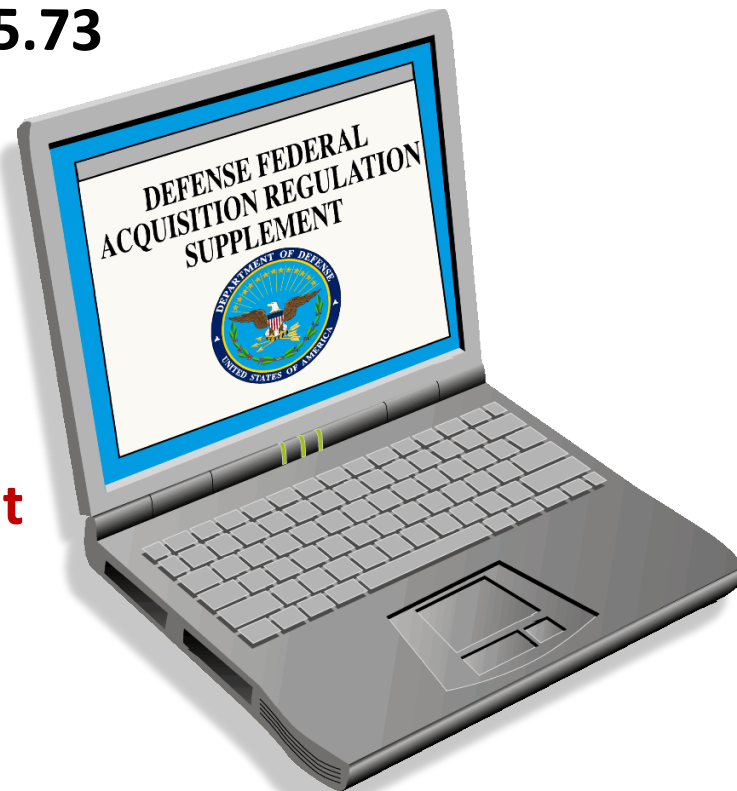




# DFARS FMS Policy

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# FMS Customer Participation

## DFARS 225.7304

FMS customers should be **encouraged to participate** with U.S. acquisition personnel **in discussions with industry** to:

- Technical Specifications
- Delivery Schedules
- Price/Performance Tradeoffs
- Special Warranty Provisions
- Other Requirements Unique to FMS Purchaser




**Degree of participation in contract negotiations** is left to the discretion of the contracting officer after consultation with the contractor.



The background of the slide features a large American flag. In the top left corner, there is a circular seal of the Department of Defense, United States of America, which includes an eagle with wings spread. Below the seal, there is a graphic of a white, multi-layered structure resembling a modern building or a piece of military equipment.

# FMS Customer Participation

## DSCA Policy Memo 09-60

A vertical strip on the left side of the slide shows a collage of military-related images. It includes soldiers in combat gear, a military vehicle (possibly a Humvee), and a fighter jet in flight.

We have customers who are interested in actively participating in FMS acquisitions, but **believe they are being summarily shut out of the process**. I request that you encourage each of your acquisition communities to take up the spirit of DFARS 225.7304 and **actively seek opportunities for customer participation** in DoD acquisitions for FMS.

Jeffrey A. Wieringa  
Vice Admiral, USN  
DSCA Director

The background of the slide features a large American flag. In the top left corner, there is a circular seal of the Department of Defense, United States of America, which includes an eagle with wings spread. Below the seal, there is a graphic of a modern fighter jet in flight. The main title 'FMS Customer Participation' is written in large, white, sans-serif font across the top of the slide.

# FMS Customer Participation

**OUSD AT&L DPAP Memo, 21 July 2011**

The FMS program is... an instrument of US foreign policy... to deter and defend against aggression, facilitate common defense and strengthen the security of the US.

Many FMS customers have voiced interest in **actively participating** in FMS acquisitions. I ask that **you seek opportunities** to enhance FMS customer involvement in your acquisition programs in order to foster better understanding, strengthen alliances, provide transparency, and build customer confidence and teamwork.

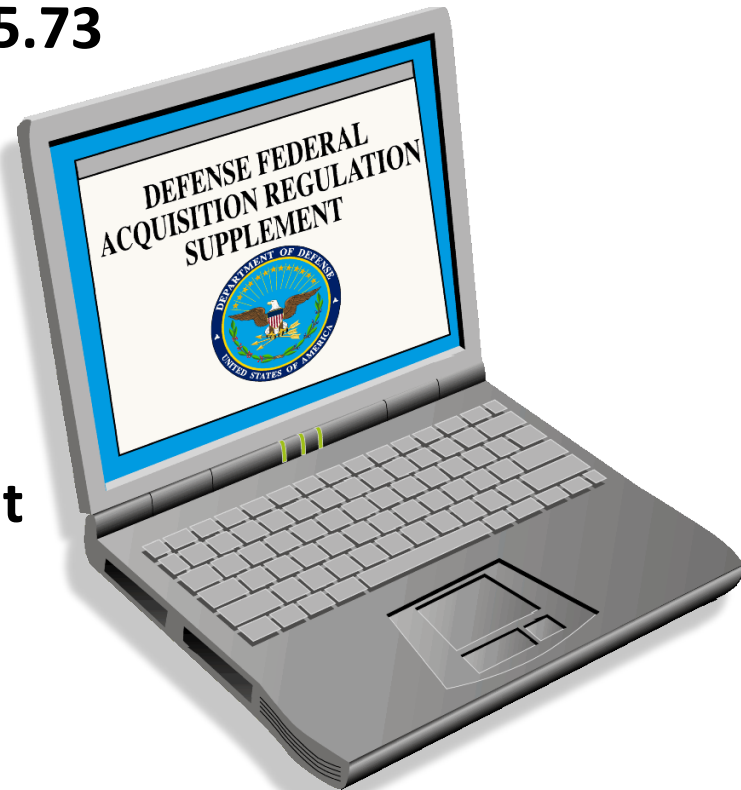
Richard Ginman  
Director - DPAP



# DFARS FMS Policy

## Acquisitions for FMS Subpart 225.73

- 7300 - Scope
- 7301 - General
- 7302 - Guidance
- 7303 - Pricing
- 7304 - Customer Involvement
- **7305 - Limitation of Liability**
- 7306 - Offsets
- 7307 – Contract Clauses







# DFARS FMS Policy

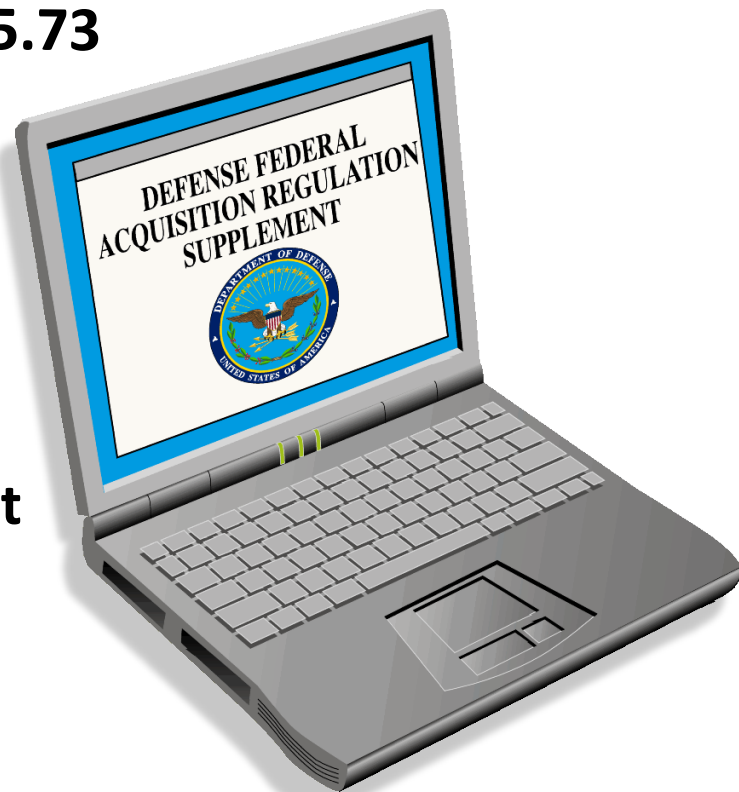
## Acquisitions for FMS

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[http://www.acq.osd.mil/dpap/cpic/ic/offsets\\_of\\_foreign\\_military\\_sales.html](http://www.acq.osd.mil/dpap/cpic/ic/offsets_of_foreign_military_sales.html)

- 7307 – Contract Clauses

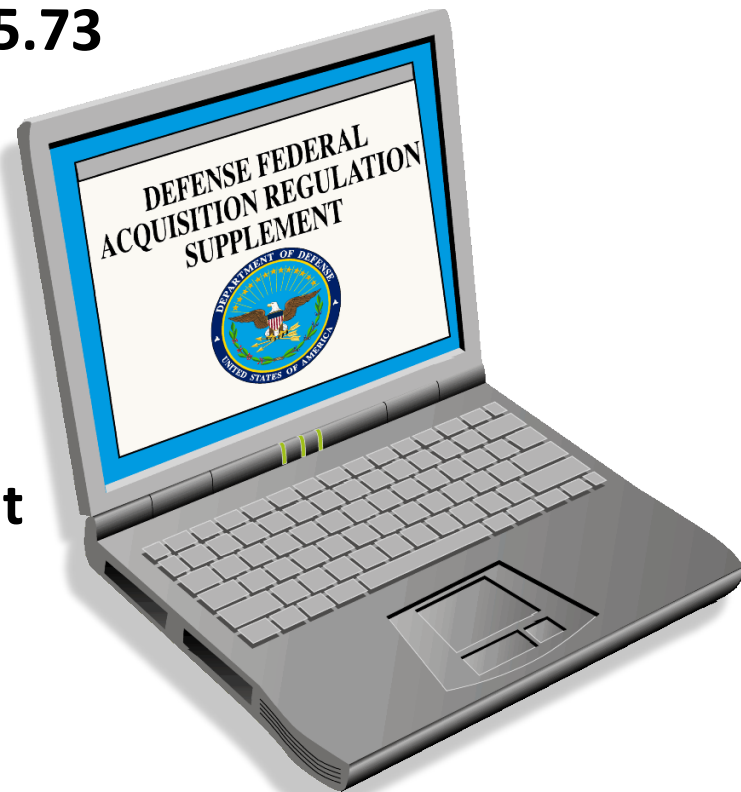




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# Colors of “FMS” Funds



## Customer Cash

- Customer Source
- No Year Limits
- DFARS “Cost of Doing Business with a Foreign Government” Applies



## Dept of State

- Foreign Military Financing Program
- No Year Limits
- Excluded in DFARS Cost of International Business



## Dept of Defense

- Appropriated to DoD
- Year Limits
- Normal DoD Cost Allowability Rules
- Pseudo-cases



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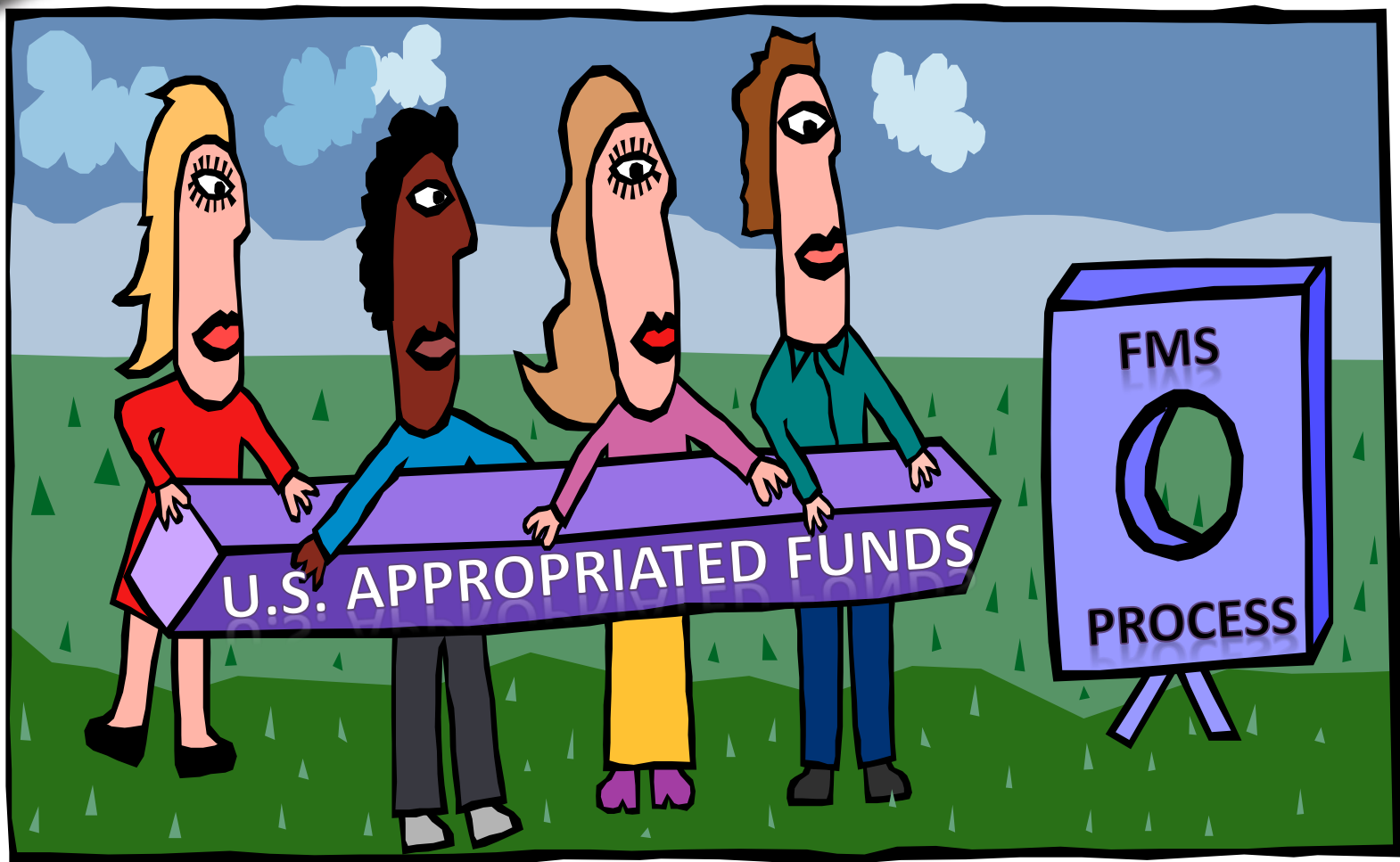
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# Pseudo LOA Funds Management





# Building Partnership Capacity

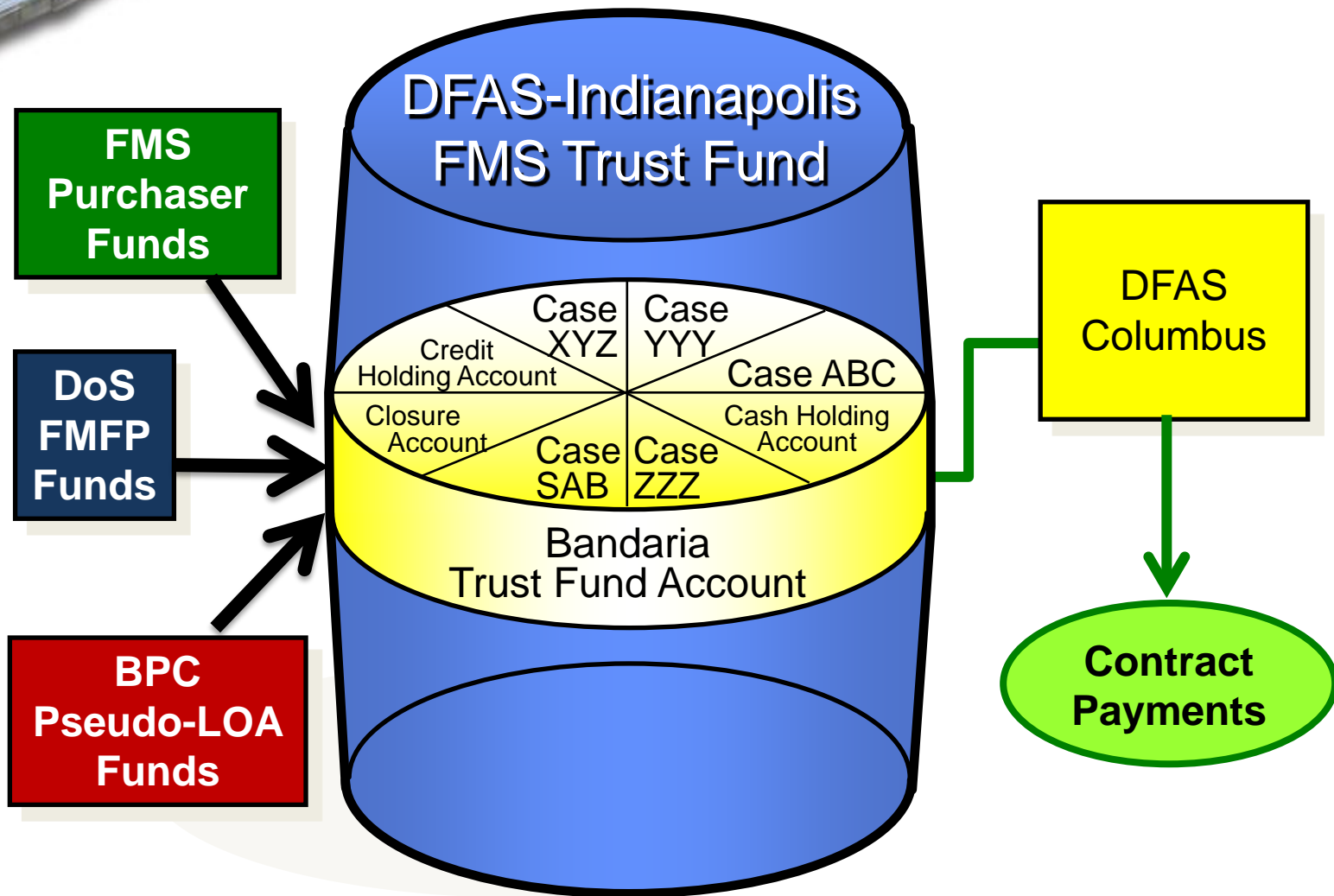
## Pseudo FMS = Building Partnership Capacity (BPC)

- PGI 225.7300 – The FMS acquisition infrastructure is also used to execute cases funded with US appropriated funds under special authority to build partner capacity
- Budget authority for BPC/pseudo cases is executed from the FMS Trust Fund
- Lines of accounting look like no-year money (**97 X 8242**), BUT must be administered per the appropriation rules
- PGI 225.7301 – For pseudo LOAs, **ensure that the contract is consistent with the period of funds availability**

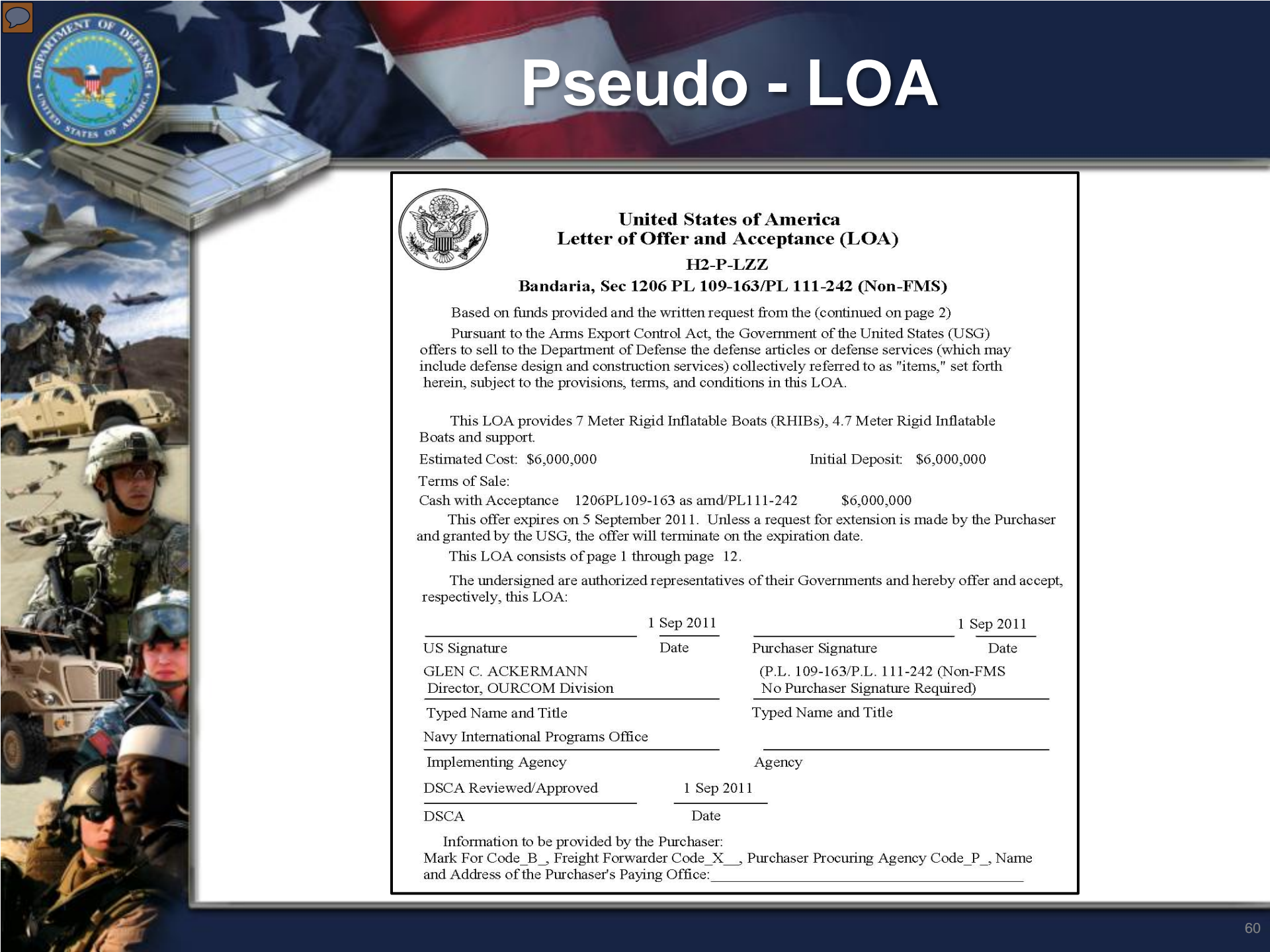




# FMS Financial Flow







# Pseudo - LOA



## United States of America Letter of Offer and Acceptance (LOA)

H2-P-LZZ

**Bandaria, Sec 1206 PL 109-163/PL 111-242 (Non-FMS)**

Based on funds provided and the written request from the (continued on page 2)

Pursuant to the Arms Export Control Act, the Government of the United States (USG) offers to sell to the Department of Defense the defense articles or defense services (which may include defense design and construction services) collectively referred to as "items," set forth herein, subject to the provisions, terms, and conditions in this LOA.

This LOA provides 7 Meter Rigid Inflatable Boats (RHIBs), 4.7 Meter Rigid Inflatable Boats and support.

Estimated Cost: \$6,000,000

Initial Deposit: \$6,000,000

Terms of Sale:

Cash with Acceptance 1206PL109-163 as amd/PL111-242 \$6,000,000

This offer expires on 5 September 2011. Unless a request for extension is made by the Purchaser and granted by the USG, the offer will terminate on the expiration date.

This LOA consists of page 1 through page 12.

The undersigned are authorized representatives of their Governments and hereby offer and accept, respectively, this LOA:

\_\_\_\_\_  
US Signature  
Date

GLEN C. ACKERMANN  
Director, OURCOM Division

Typed Name and Title

Navy International Programs Office

Implementing Agency

DSCA Reviewed/Approved

DSCA

1 Sep 2011

Date

\_\_\_\_\_  
Purchaser Signature  
Date

(P.L. 109-163/P.L. 111-242 (Non-FMS)  
No Purchaser Signature Required)

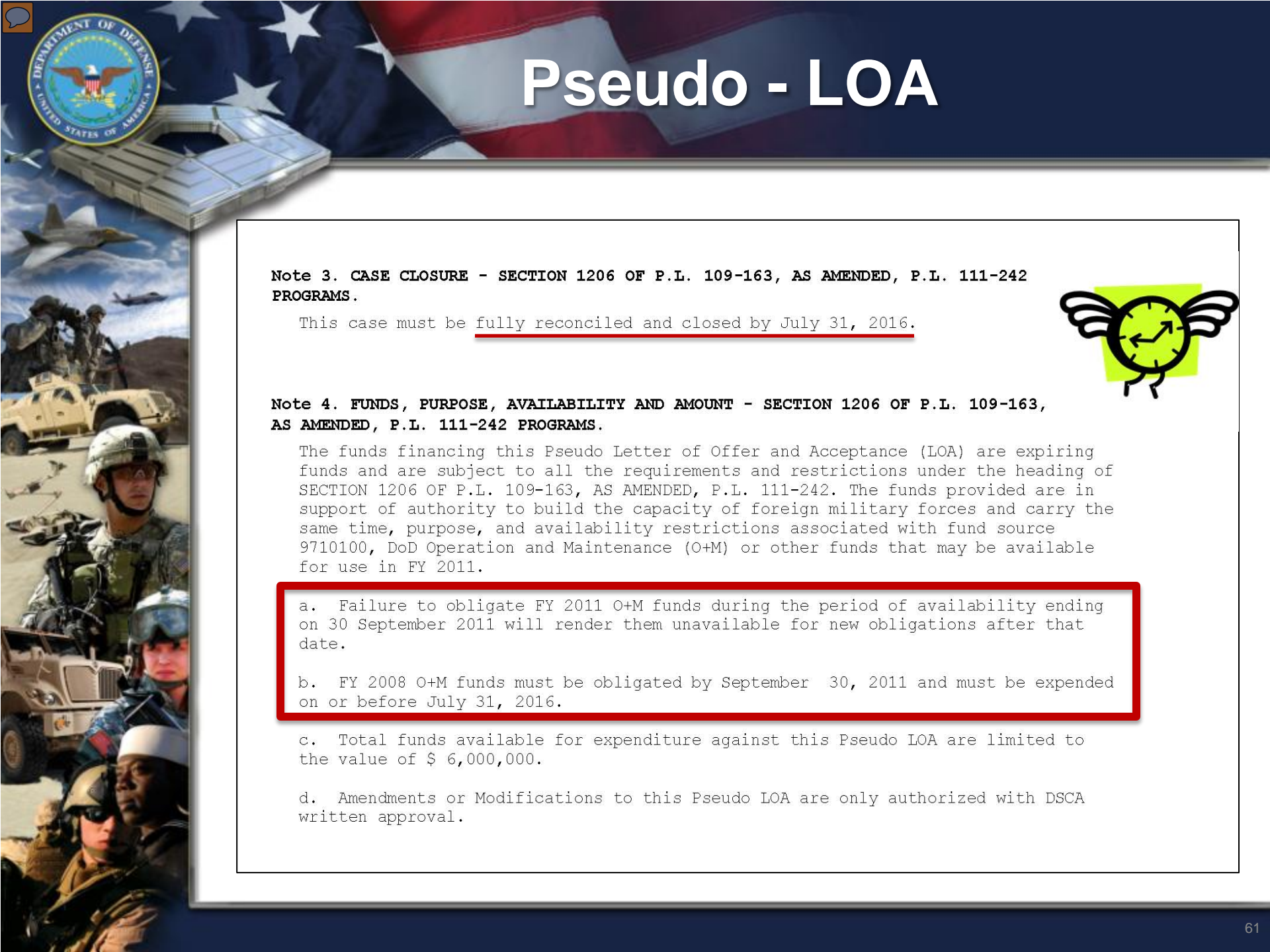
Typed Name and Title

Agency

1 Sep 2011

Date

Information to be provided by the Purchaser:  
Mark For Code\_B\_, Freight Forwarder Code\_X\_, Purchaser Procuring Agency Code\_P\_, Name  
and Address of the Purchaser's Paying Office:\_\_\_\_\_



# Pseudo - LOA

**Note 3. CASE CLOSURE - SECTION 1206 OF P.L. 109-163, AS AMENDED, P.L. 111-242 PROGRAMS.**

This case must be fully reconciled and closed by July 31, 2016.



**Note 4. FUNDS, PURPOSE, AVAILABILITY AND AMOUNT - SECTION 1206 OF P.L. 109-163, AS AMENDED, P.L. 111-242 PROGRAMS.**

The funds financing this Pseudo Letter of Offer and Acceptance (LOA) are expiring funds and are subject to all the requirements and restrictions under the heading of SECTION 1206 OF P.L. 109-163, AS AMENDED, P.L. 111-242. The funds provided are in support of authority to build the capacity of foreign military forces and carry the same time, purpose, and availability restrictions associated with fund source 9710100, DoD Operation and Maintenance (O+M) or other funds that may be available for use in FY 2011.

- a. Failure to obligate FY 2011 O+M funds during the period of availability ending on 30 September 2011 will render them unavailable for new obligations after that date.
- b. FY 2008 O+M funds must be obligated by September 30, 2011 and must be expended on or before July 31, 2016.
- c. Total funds available for expenditure against this Pseudo LOA are limited to the value of \$ 6,000,000.
- d. Amendments or Modifications to this Pseudo LOA are only authorized with DSCA written approval.

# Contracting Officer in LOA Closure

- Traditional FMS:
  - Preferred : Close contract – permits final FMS closure
  - Alternative: For open contracts, provide an assessment of each respective FMS customer's remaining contractual liability
    - Permits interim case closure
- Pseudo / BPC FMS:
  - Preferred : Close entire contract
  - Alternative: For open contracts, ensure CLINs supporting pseudo FMS are physically delivered and funds disbursed (i.e., no ULOs) prior to funds expiration



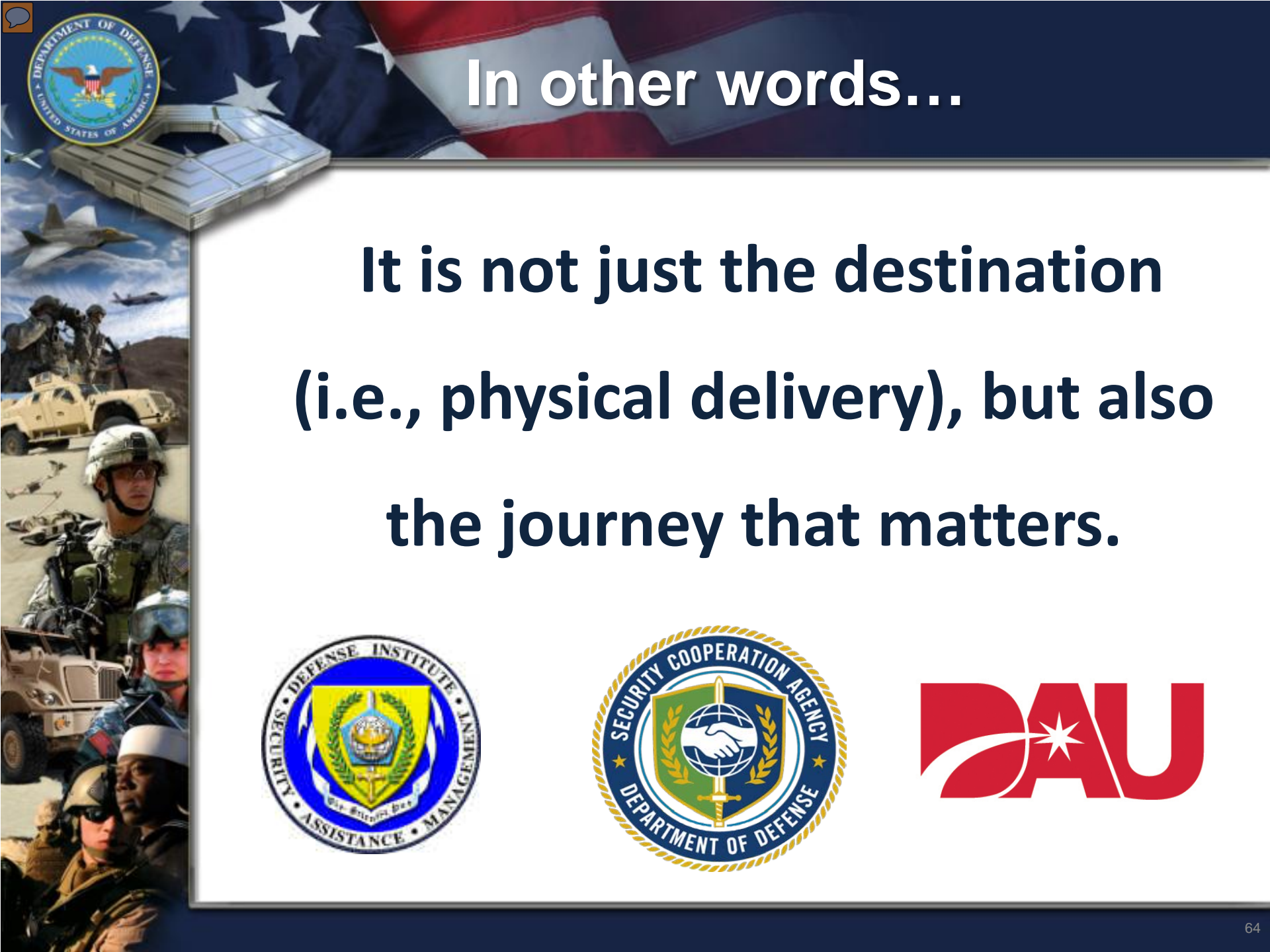




# Conclusion

- Contracting for FMS is more than just purchasing items & services
- FMS leverages DoD's acquisition infrastructure to:
  - Promote strategic relationships
  - Achieve national security (DoD) and foreign policy (DoS) objectives
  - Provide enabling capabilities to partners for the common defense
- FMS value does not begin at physical delivery, it includes the procurement process itself
- Contracting Officers are essential enablers to successful FMS program development, execution and closure

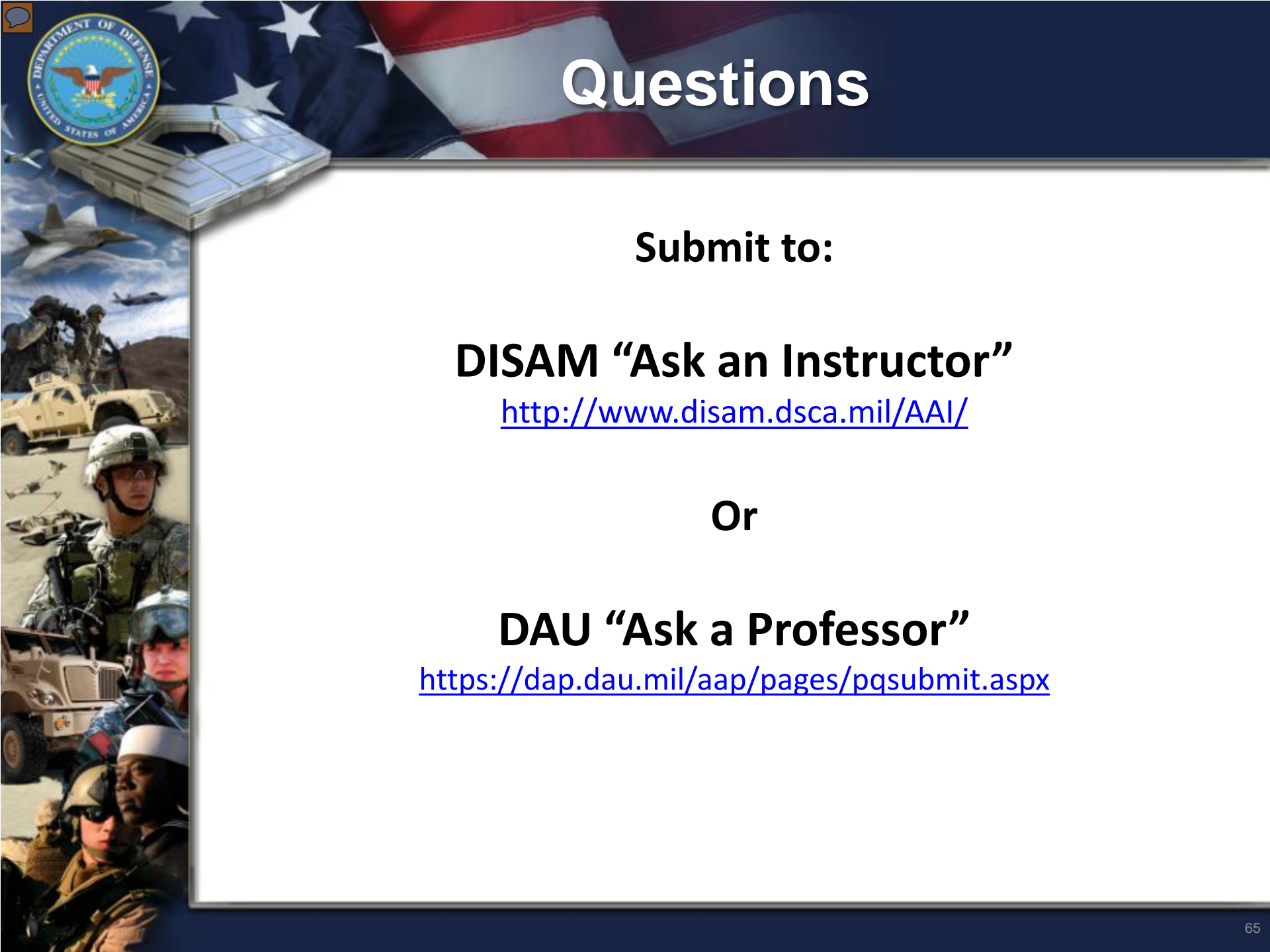




**In other words...**

**It is not just the destination  
(i.e., physical delivery), but also  
the journey that matters.**





# Questions

**Submit to:**

**DISAM “Ask an Instructor”**

<http://www.disam.dsca.mil/AAI/>

**Or**

**DAU “Ask a Professor”**

<https://dap.dau.mil/aap/pages/pqsubmit.aspx>